

DELEGATED REPORT

Application No:	P/25/0095
Site Address:	St Michaels Alma Terrace Dowlais Merthyr Tydfil CF48 3RU
Development:	Certificate of lawfulness for a children's care home
Case Officer:	Mr Gareth Davies
Site Visit:	23rd April 2025
Application Expiry Date:	4th June 2025

APPLICATION SITE

This application relates to a large 3 bedroom semi-detached property situated within the residential area of Dowlais. The property currently includes a lounge, dining room, store and garage at ground floor; a bathroom and 2 bedrooms at first floor and a bedroom at second floor. The property sits within its own curtilage which comprises a modest front garden area and a substantial drive on its southeastern side which can accommodate up to 4 cars. The property shares a party wall with Craig House to its north west.

The property fronts and has its principal access on to Alma Terrace. The property also has access to a rear lane that is shared with several traditional properties on Bryntirion Street.

PROPOSED DEVELOPMENT

A certificate of lawful development is sought under Section 192 of the Town & Country Planning Act 1990 for the proposed use of the dwelling within Use Class C3(b) as a children's care home for up to four children (12-17 years of age) though it is envisaged that there would only be three children present on a regular basis with the fourth bedroom there to cater for emergencies and crossovers. Children resident at the site could present with complex needs including emotional and behavioural difficulties, autism, anxiety, depression and oppositional defiant disorder. The applicant is of the view that the proposal would not result in a material change in the current use of the residential property and would constitute lawful development, for which planning permission is not required.

As mentioned above the home would be used by children aged 12 – 17 and they would receive 24h support and would be supervised by care workers working on a rotational pattern including staff sleeping at the property and using one of the bedrooms.

The intension is that the children and their carers would live, eat and operate as a single-family unit for a prolonged period of time within a household environment where they can lead a normal life without prejudice until they reach adulthood.

The children would not require any special care other than to meet the demands of being “disabled”. The care that the children would receive is intended to support their upbringing and ensure they lead a normal life, as well as to teach them the skills to live independently in the future. The children would attend school in the locality and participate in extracurricular activities.

None of the children would require visits by a doctor or medical staff on a regular basis, as if this was the case they would be placed in a specialist care facility. It is also very unlikely that the children’s parents would visit the property in the interests of their wellbeing. However other family members and friends may occasionally visit the property as might be expected with any residential use.

As part of the development the house will be refurbished (but not extended) to form a dining/living room, kitchen, utility room and a living/games room at ground floor; a bathroom and two bedrooms at first floor and a bathroom, two bedrooms and a staff office/room at second floor. Though a number of areas are shared space all children will have their own bedrooms.

PLANNING HISTORY

None

CONSULTATION

No consultation exercise was undertaken

PUBLICITY

There is no requirement to undertake a public consultation exercise in respect of applications for a certificate of lawfulness and no publicity exercise was undertaken as part of this application.

Ward members have submitted a letter relaying the concerns of residents that the current submission will not be going through the normal planning process and that they have been denied to opportunity to comment and that their concerns have not been considered. Members have also conveyed concerns over access, car parking and congestion that might result from the grant of a certificate. Whilst Members are clear they do not oppose children’s care homes in the ward they hold the view that this proposal should have been subject to the scrutiny that a full planning application would have brought.

Notwithstanding the fact that there is no requirement to undertake a public consultation exercise, two representations have been received from local residents raising the following issues: -

- The home overlooking the rear gardens of adjacent properties is unacceptable from a privacy point of view.
- Concerns about parking provision and the amount of noise that would be associated with staff coming to and leaving the facility.

- The proposals making the level of congestion in the street worse than it currently is, and potential consequential effects for emergency service vehicles.
- Security – the lane between St Michael's and other properties could become a loitering space for children in the home and resultant anti social behaviour, making the existing situation worse.
- The locality is an unsuitable area for a children's home.
- There has been no public consultation in respect of the application after promises that there would be.

Whilst the concerns expressed by the public have been noted they have no weight in the consideration of an application for a Certificate of Lawfulness which can only concern itself with the issue of whether or not planning permission is required for the proposed use, which is a matter of planning law.

POLICY CONTEXT

The determination of this application does not require consideration of the planning merits of the proposed use. Therefore, the policies of the Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016- 2031 are not of direct relevance insofar as they go to the merits of the proposed use. However, in considering whether there would be a material change in the character of the use, the development plan is relevant insofar as it may indicate a particular planning consequence of the proposed use. In this respect regard has been given to *The Queen on the Application of Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government* [2016] EWHC 1785 (Admin) Holdgate J, Paragraph 7 which sets out:

“(3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;

(4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use.”

This means that matters such as the residential character of the area, strain on the welfare services and reduction on the stock of private accommodation available, traffic movements, etc. might all be relevant to the assessment which needs to be made, in this instance there are no specific policies within the LDP that would be significantly affected by the proposed children's care home.

Welsh Office Circular 24/97: Enforcing Planning Control, Annexe 8, deals with “Lawfulness and the Lawful Development Certificate”:

Paragraph 8.26 states that if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, they shall issue a certificate to that effect and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant.

Paragraph 8.28 advises that a LDC granted under Section 192 shall specify the land to which it relates, describe the use or operations in question, (identifying the relevant “use class” where appropriate), and give the reason why the proposal would be lawful.

PLANNING CONSIDERATIONS

To determine that the proposed use of the property as a children's care home would be lawful and does not require planning permission, it would need to be demonstrated that: -

- The proposal would fall within the same classification as the existing use as specified in the Use Classes Order 1987 (as amended), or
- That there would be no "material change" in the use and so does not constitute development that is subject to the controls of the planning system.

Change of use classification

The Town & Country (Use Classes) Order 1987 (as amended) groups and specifies different uses within broad categories of classification. Under Section 55(2) (f) of the Town & Country Planning Act 1990, where a use falls within a particular designated class, then no planning permission is required for any change that falls within the same class.

In this case, the application relates to a residential property that currently falls within Use Class C3 (dwellinghouses), which is formed in three parts: -

- C3(a): a single person or people living together as a family.
- C3(b): not more than 6 people living together as a single household and receiving care.
- C3(c): not more than 6 people living together as a single household who do not fall within the C4 definition of a house in multiple occupation (HMO).

It is proposed that the house would form a home for up to 4 unrelated children (aged 12-17) who would live together as a single household and due to their disabilities, they would receive care from non-residential care workers. As such the residents would not form a family and would require assisted living. Therefore, the proposed use would not fall within either Use Class C3(a) or C3(c).

Turning to whether or not the proposed use would fall within Use Class C3(b), the *North Devon District Council v First Secretary of State* [2004] 1 P&CR 38 is of particular relevance to this application, where it considered whether a dwellinghouse used to care for two children by non-resident staff on a rota basis, should properly be considered to fall within Use Class C2 (residential institutions). For the purposes of Use Class C3(b), it was noted that the definition of "care", as set out in the Use Classes Order, excludes the personal care of children, except in Class C2.

It was established in the North Devon case that children on their own could not be regarded as a household as they need to be looked after. They cannot run a house or be expected to deal with the matters that go with running a home. As a matter of principle children are regarded as needing full time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should. It was then questioned whether carers who do not live but who provide, not necessarily through the same person, a continuous 24 hour care can be regarded as living together. In this respect it was noted that the concept of living together as a household means that a proper functioning household must exist, that must mean that children and a carer must reside at the premises. It was concluded in the North Devon

case that a home for children where only non-residential care is provided should be considered a C2 use rather than a C3 use.

Given the similarities between the North Devon case and the current proposal, the use of St Michael's as a children's care home in this instance should fall within Use Class C2 rather than class C3(b).

Notwithstanding the above, the North Devon Case also makes it clear that the mere fact that there is a change from C3 to C2 use, does not mean that the change requires planning permission. It must be considered whether the proposed change is a "material" one, which is a matter of fact and degree in the circumstances of each individual case.

Material change of use

It is necessary to determine whether the proposed children's care home use as set out by the applicant would be materially different to that of a dwellinghouse and would result in the development requiring planning permission.

The Town & Country Planning Act does not define what constitutes a material change of use. Therefore, it is necessary to exercise some considered judgement based on the individual circumstances of each case. In general, the differences that might be considered "material" are those that would result in a change in the character of the use of the land or building. This requires consideration of whether there would be any significant planning consequences as a result of the change.

In the first instance, it is necessary to provide a baseline in which the materiality of the proposed change of use can be measured for comparison. The existing residential property was last used as a 3 bedroom semi-detached house over three floors that was built for that purpose. There is no limit on the size of a family that can occupy a dwellinghouse within Use Class C3(a), and it is likely that a sizeable property within what is a reasonably small curtilage typical of this locality, could be occupied by a relatively large family. The property might also be occupied under Use Class C3(a) and C3(c) by up to 6 people who are not related as a family but live together as a single household, which can include an arrangement where those occupants are also provided with care.

In many respects the property would operate in a way that is similar to a normal family home. The property would provide the children with their sole and main residence, where they would have the freedom to socialise together and use the shared facilities (kitchen/dining/lounge etc). The children would likely have shared meals prepared for them or they could make their own food and drink. The residents would be taken to school and brought home each day, as well as to any extracurricular activities they wish to attend. Although the carers would not be resident, while in attendance, they would interact with the property and the residents in a similar manner to a parent or guardian. The proposal seeks to foster a lifestyle that would be the same as if the children were living in a conventional family home.

It is acknowledged that the home would be provided by a commercial organisation and that the carers would be employees attending the home as their place of work. However, these are perhaps more coincidental factors, which actually have little effect on the character and way in which the property would be used on a day-to-day basis. The conduct, activity and interaction between residents and staff would in all likelihood be very similar to that of a family unit. If for example, the care workers use an office provided within

the property, this is not obviously different in character and impact to the resident of a dwellinghouse normally using a home office or study. The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence until they reach adulthood and that the length of stay is generally more than temporary or passing. It would not for example be a 'half way' house or provide overnight emergency lodgings.

The distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for the day-to-day private domestic existence. It does not lose this characteristic simply because it is under commercial management to provide its residents with care. It is noted that there are no significant alterations necessary to the outside of the property to accommodate the children's care home, and the proposed interior would be altered to achieve the required standard of accommodation.

The home would provide care for children who, through no fault of their own, may have come from families that are unable to cope with their upbringing. Some of the children may have physical disabilities and some may suffer from mental health disorders. The home would provide a safe environment where the children can receive care in response to their disabilities and learn the necessary skills to live independently in the future.

It is perhaps expected that from time to time some of the residents might display rather extreme behaviours (shouting, screaming etc). However, the residents would not have any medical or clinical condition requiring secured facilities. Such behaviours are unlikely to define the prevailing character of the resident's conduct or the land use. Indeed, such behaviours are more likely to be displayed occasionally as an emotional episode, where shouting and screaming might be comparable to a family's children playing in the garden or a troublesome teenager's outburst at any other dwellinghouse.

In this case the planning unit comprises a substantial semi-detached house within its own limited curtilage with neighbouring residential properties close by. Any noise generated would be typical of any other family home in the area and would offer no more impact on the surroundings than existing properties already do to a point where it could be argued that it would have a different impact on local amenity. In this context, predicted externalities and amenity impacts are not obvious indicators that there would be a "material change of use".

The house would have a maximum of four residents, none of whom drive or own a car. This would contrast with most family households, where it is likely that at least two adult members, often more where there are adult children, own and use a car. Additionally, in the case where 6 adults might be living together as a single household, it is possible that all 6 members could all use their own car, with all the associated comings and goings that might be expected.

Although the residents themselves would not drive, there would no doubt be some vehicle movements associated with the proposed use. For instance, the staff, who provide care on a shift basis, would come and go over a 24hr period, there would be trips taking the children to and from school, as well as friends or family visiting on occasion. However, when considered together, the cumulative level of activity, traffic movement and requirement for parking is unlikely to be any greater than a typical dwellinghouse use, where all those residents make journeys to and from work, school, shops and services and can take any number of deliveries and visits from friends, family or tradesmen etc. Indeed, the proposal might be most comparable to a dwellinghouse within Class C3(b), where up

to 6 people living together as a single household who receive care, don't drive themselves but would nonetheless be attended by care workers and other services.

In this case, the property is adequately accessed via the existing highway network that serves the wider community, with ample room on the driveway and hardstanding to accommodate at least 4 parking spaces. Within this context, the fluctuations in the number and regularity of vehicle movements of the proposed use, in comparison to the existing dwellinghouse, would not be felt as a material impact on its surroundings, particularly as parking available to the application property is greater than much of the residential development in the area, and cannot be obviously identified as an indication of a 'material change'.

CONCLUSIONS

The lawful use of a dwellinghouse, within Class C3 of the Use Classes Order, is broad in its scope and could in association bring with it considerable activity and vehicle movements.

The prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between the proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

Accordingly, the proposed children's care home would not amount to a 'material' change of use. Therefore, the following recommendation is made:

RECOMMENDATION: **BE APPROVED** for the following **REASON:**

1. The proposed children's care home, under Section 55(1) of the Town & Country Planning Act 1990, would not result in a material change in the current use of the building as a dwellinghouse. Therefore, the proposal does not constitute development that requires planning permission.

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

DATE: 29.05.2025